

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Dominique BOUREL et al.

Title: THERAPEUTIC PRODUCTS WITH
ENHANCED ABILITY TO
IMMUNOMODULATE CELL FUNCTIONS

Appl. No.: 10/551,819

Filing Date: 06/12/2006

Examiner: Ilia I. Ouspenski

Art Unit: 1644

Confirmation: 3972

Number:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the application.

The Patent Office determined that the patent was entitled to 145 days of PTA. Applicants believe that this PTA determination was made in accordance with the <sup>08/02/2010 CDTED1 00000025 190741 10551819
Sale Ref. 00000025 Date: 190741 10551819
1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-</sup>

year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

In *Wyeth v. Kappos*, No. 2009-1120 (Jan. 7, 2010), the Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that "[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do *not* 'overlap' under section 154 (b)(2)" (emphasis added).

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute (now adopted by the Patent Office), and has determined that the application is entitled to 596 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 682 days

(b) Total Applicant delay: 86 days

Final PTA Determination: 596 days

Applicants therefore respectfully request that the patent be accorded 596 days PTA.

Interview Summary	Application No.	Applicant(s)
	10/551,819	BOUREL ET AL.
	Examiner	Art Unit
	ILIA OUSPENSKI	1644

All participants (applicant, applicant's representative, PTO personnel):

(1) ILIA OUSPENSKI

(3) _____

(2) ROUGET F. HENSCHEL

(4) _____

Date of Interview: 07 October 2009.

Type: a) Telephonic b) Video Conference
c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.
If Yes, brief description: _____.

Claim(s) discussed: _____.

Identification of prior art discussed: _____.

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached; or any other comments: Applicant presented arguments against the Double Patenting rejection of record, as addressed in the accompanying Office Action. Applicant further provided authorization for the Examiner's Amendment as set forth in the accompanying Office Action.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

/ILIA OUSPENSKI/
Primary Examiner, Art Unit 1644